IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

RSA.No. 371 of 2007()

(AGIANST THE JUDGMENT IN AS.5/2000 of SUB COURT, CHERTHALA IN OS.43/1996 DTD. 7/09/1999 OF THE MUNSIFF COURT, CHERTHALA)

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APPELLANT-APPELLANT-PLAINTIFF:

P.N.VIJAYAN, SON OF NATESAN ACHARY,
VASANTH NIVAS, CHERTHALA EAST.

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENT: RESPONDENT-DEFENDANT:

JOHN, SON OF FRENCH,
ARACKAPARAMBIL HOUSE, CHERTHALA NORTH P.O.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 03/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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R.S.A.No. 371 OF 2007

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DATED THIS THE 3rd DAY OF JULY, 2007

JUDGMENT

Plaintiff in O.S.43 of 1996 on the file of Munsiff Court, Cherthala is the appellant. Defendant is the respondent. Suit was filed for demarcation of the boundaries of the plaint schedule property and for a permanent prohibitory injunction. The case of appellant was that plaint schedule property having an extent of one cent in Survey No.237/3 of Cherthala North Village with the building originally belonged to Frenchu Varghese and appellant obtained the title under Ext.A1 sale deed dated 26.5.1993 and respondent is the brother of Frenchu Varghese and he is not having any right or possession over the plaint schedule property and he attempted to construct a compound wall encroaching a portion of the property and so appellant is to be restrained by a decree for injunction and is entitled to fix the boundaries of the plaint schedule property. Respondent resisted the suit contending that appellant has no title to the plaint schedule property as claimed and under Ext.A1 sale deed only the building with the land where the building stands was assigned to the appellant and he is not entitled to claim anything more and

therefore appellant is not entitled to the decree sought for. A Commission was appointed and Commissioner submitted Ext.C1 report and C1(a) sketch. Exts.A1 to A4 were marked on the side of appellant and Ext.B1 to B6 on the side of respondent. No oral evidence was adduced.

3. Learned Munsiff on the evidence found that Commissioner has reported inability to correctly identify plaint schedule property as there is no demarcating boundary. Learned Munsiff also found that appellant has right and title only to the building and the land where the building is standing and not over one cent of property as claimed in the suit and he is not entitled to a decree for fixation of boundaries of the plaint schedule property or a decree for injunction. Suit was dismissed. Appellant challenged the decree and judgment before Sub Court, Cherthala in A.S.5 of 2000. Learned Sub Judge, on reappreciation of evidence, confirmed the findings of learned Munsiff and dismissed the suit. It is challenged in the second appeal.

4. Learned counsel appearing for appellant was heard. The argument of the learned counsel was that under Ext.A3 agreement for sale executed by the assignor under Ext.A1 in favour of the wife of appellant, the assignee had agreed to sell the remaining six cents of property excluding the plaint schedule

property and therefore courts below should have found that appellant has right and title to the one cent of the plaint schedule property claimed in the suit and therefore findings of courts below are erroneous and are to be set aside.

5. Courts below found that pursuant to Ext.A3 agreement O.S.13 of 1996 was instituted by the wife of appellant seeking a decree for specific performance of Ext.A3 agreement and Ext.B3 is the judgment in that suit. It was also found that predecessor of appellant filed O.S.347 of 1993 and Ext.B5 copy of the plaint show that he claimed right only over the building and the land where the building stands and being an assignee appellant cannot claim only that right. It was therefore found that appellant is not entitled to the reliefs sought for. The findings were arrived at on the appreciation of evidence. That factual findings cannot be interfered in exercise of the powers of this court under Section 100 of Code of Civil Procedure. No substantial question of law is involved in the appeal. Hence appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-